

No. 8160

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IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

CAMPBELL WILLIAM SKEOCH BRANCH,
an alien,

Appellant,

vs.

EDWARD CAHILL, Commissioner of Immi-
gration for the Northern District of Cali-
fornia at the Port of San Francisco,
California,

Appellee.

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

This appeal is from an order (T. 9) of the United States District Court for the Northern District of California, Southern Division, denying appellant's petition for a writ of *habeas corpus*.

FACTS OF THE CASE.

Appellant, a subject of Great Britain (Exhibit "A", p. 188), came to the United States in 1923 (Id. p. 187). The Secretary of Labor has ordered him deported on the ground that he:

“is affiliated with an organization, association, society and group that writes, circulates, distributes, prints, publishes, and displays printed matter advising, advocating and teaching the overthrow by force and violence of the government of the United States.” (Exhibit “A”, p. 212.)

QUESTION INVOLVED.

Appellant’s contention that there is not sufficient evidence to support the Department’s finding presents the single question whether or not there is “some evidence from which the conclusion of the administrative tribunal could be deduced” (*U. S. ex rel. Vajtauer v. Commissioner of Immigration*, 273 U. S. 103, 106, 47 S. Ct. 302, 304, 71 L. Ed. 560, 563).

ARGUMENT.

The pertinent portions of the statute (8 *U. S. C. A.*, Section 137(e), (g)) are as follows:

“In addition to the aliens who are by law otherwise excluded from admission into the United States, the following persons shall also be excluded from admission into the United States:

* * * * *

“(e) Aliens who are members of *or affiliated with* any organization, association, society or group that writes, circulates, distributes, prints, publishes, or displays * * * any written or printed matter of the character described in Paragraph (d),” i. e., “written or printed matter advising,

advocating or teaching * * * the overthrow by force or violence of the government of the United States * * *.”

“(g) Any alien who at any time after entering the United States, is found to have been at the time of entry, *or to have become thereafter*, a member of any one of the classes of aliens enumerated in this section shall, upon the warrant of the Secretary of Labor, be taken into custody and deported * * *.”¹

The Department’s finding is:

(a) That appellant is affiliated with the Communist Party; and

(b) That the Communist Party writes, circulates, distributes, prints, publishes and displays printed matter advising, advocating and teaching the overthrow by force and violence of the government of the United States (Exhibit “A”, pp. 211-203).

The term “affiliated”, as used in this statute, has been construed by this Court in

Wolck v. Weedin, 58 F. (2d) 928,
wherein this Court said:

“Appellant’s sympathy with the aims of the Communist Party and his desire to join that party when allowed to do so; his admission that he had been ‘connected’ therewith for about a year; his attendance at party meetings; his selling the party organ; his giving money to the Communist Party whenever he could afford it, even though it was only in small amounts; all of these things are within the meaning of the statute

1. Italics ours, here and elsewhere, unless otherwise stated.

above and particularly subsection (2) quoted, sufficient to establish Wolck's 'affiliation' with the Communist Party and consequently determine his liability to deportation. Moreover, the Standard Dictionary defines the term 'affiliate with' as 'to receive on friendly terms; to associate with; to be intimate with; to sympathize with; to consort with', and Webster's New International Dictionary defines the term as 'to connect or associate one's self with'."

It is provided by statute (8 *U. S. C. A.*, Section 155) that:

"In every case where any person is ordered deported from the United States under the provisions of this subchapter, or of any law or treaty, the decision of the Secretary of Labor shall be final."

In

Tisi v. Tod, 264 U. S. 131, 133, 44 S. Ct. 260, 261, 68 L. Ed. 590, 591,

Mr. Justice Brandeis said:

"We do not discuss the evidence; because the correctness of the judgment of the lower court is not to be determined by enquiring whether the conclusion drawn by the Secretary of Labor from the evidence was correct or by deciding whether the evidence was such that, if introduced in a court of law, it would be held legally sufficient to prove the fact found.

"The denial of a fair hearing is not established by proving merely that the decision was wrong. *Chin Yow v. United States*, 208 U. S. 8, 13. This is equally true whether the error consists in

deciding wrongly that evidence introduced constituted legal evidence of the fact or in drawing a wrong inference from the evidence.”

As stated by this Court in

Kenmotsu v. Nagle, 44 F. (2d) 953:

“Moreover, the right of the Courts to review the action of the Department having the authority to adjudge the facts extends only so far as to determine that the warrant of deportation was not arbitrarily issued; or issued as the result of an unfair hearing (citing cases).”

The evidence before the Department in the case at bar is discussed in its memorandum (Exhibit “A”, pp. 211-203). We shall first consider the evidence of appellant’s affiliation with the Communist Party.

Appellant was for approximately two years Managing Editor of the “Western Worker—Western Organ of the Communist Party U. S. A.—(Section of the Communist International)” (Exhibit “A”, pp. 186, 165, 132; copies of the “Western Worker” contained in Exhibit “B”). At the time of the hearing and for approximately two or three years prior thereto appellant was an instructor, and during a part of that time was Director of the “San Francisco Workers School” (Id. pp. 191, 165, 140). That this institution also is operated under the official guidance and leadership of the Communist Party is clearly shown by the announcement of the school itself, which shows appellant as its Director, and as an instructor, and states:

“It is necessary to state that the Workers School is the only school in San Francisco which

authoritatively bases its education on the theory of Marxism-Leninism *under the official guidance and leadership of the Communist Party of the U. S. A. and the Communist International.*" (See announcement marked "Part of Exhibit E", and contained in envelope designated as Exhibit "B" herein).

The announcement shows as members of the school's advisory council "Sam Darcy, District Organizer Communist Party" and "George Morris, Editor Western Worker". It is admitted that Darcy is the person who employed appellant as managing editor of the Western Worker, the Party's official organ (Exhibit "A", p. 132), that Darcy was editor of the Western Worker at that time (Id. p. 132), and that Darcy was also the Communist Party's nominee for the office of Governor of California (Id. pp. 86-85).

The school's announcement also states in outlining its course entitled "Agitation and Propaganda Methods" that said course is "limited to members of the Communist Party". Theodore R. Steele, a police officer who, under order of his superiors, joined the Communist Party and ultimately became an organizer therein, testified that organizers in the Communist Party were required to attend an "Agit.-Prop." class, that at that time (June to September 1933) the "Agit.-Prop." class was taught by appellant, and that the class was made up exclusively of those who were organizers, literary agents or speakers of the Communist Party (statement of the witness Steele is also contained in Exhibit "B").

We quote further from the announcement of the San Francisco Workers School:

“The San Francisco Workers School functions on the basis of the economic, political and philosophic teachings of Marx, Engels and Lenin, and has as its fundamental principle the inseparability of revolutionary theory from revolutionary practice. The central aim of the Workers School is to equip workers with the knowledge and understanding of Marxism-Leninism and its effective application in their militant struggles against the capitalist class toward the decisive proletarian victory. The revolutionary working class movement is in constant need of trained new groups of active workers and leaders. The School is not an academic institution. It participates in all the current struggles of the working class.”

We pause to note the resemblance between that language and the statement in the pamphlet, “Why Communism”, which is published by the Western Worker Publishers at the local headquarters of the Communist Party (with an introduction written by the aforesaid Sam Darcy), that:

“The Communist Party not only draws into its ranks the most advanced and most militant workers, but it gives them political training. It teaches them Marxism-Leninism, which equips the worker with a thorough understanding of the society he lives in and of the historic task of the working class. The Communist Party looks upon its members as upon leaders in the struggle and it trains them to be fit for this work. The Communist Party is a school of the class struggle in

every one of its phases.” (Page 84 of said pamphlet, which is a part of Exhibit “B”).

In addition to his admitted service as Director and instructor at this school, which is obviously an integral part of the Communist Party organization, and in addition to his admitted previous service as Managing Editor of the official organ of the Communist Party, there is much other evidence of appellant’s affiliation with that Party. There is uncontradicted testimony that on June 16, 1934, appellant addressed a meeting at Oakland, California, at which he solicited funds and support for the Communist Party (Exhibit “A”, pp. 125-124). There is testimony of one Paul T. O’Dowd regarding a conversation at a printing establishment where appellant was engaged in preparing an issue of the “Western Worker” for the press, the gist of the conversation being that in reply to a criticism expressed by the witness of the Communists’ refusal to hear the Mayor, appellant declared that the Communists did not believe in free speech and that

“it made no difference whether people liked or disliked him for the reason that they weren’t going to go to the ballot to put over their idea, that they were not going to use the ballot, that the ballot was controlled by the money people, and that no effort on the part of anybody to gain control of the Government by vote would succeed and that they were forced to use violence and force and that is the way they intended to do it; that anybody who got in their way would have to be put out of the way, the thought being, as I understand it, was that anybody who got in the way would probably be killed.” (Exhibit “A”, p. 181.)

Another Government witness testified as follows regarding a speech made by appellant at a street demonstration in San Francisco:

“A. The alien said that they did not want war, that they did not want to become involved in any war, and that if they did become involved they would change the capitalistic war into a civil war as they did in Russia.” (Exhibit “A”, p. 160)

“A. He said they would change the capitalistic war into a civil war and overthrow this government.” (Exhibit “A”, p. 155)

This slogan with reference to changing a capitalistic or imperialistic war into a war to overthrow the capitalist system and establish a workers’ government in the United States is one of the principal catchphrases of Communist Party dogma. (See p. 31 of pamphlet “Why Every Worker Should Join the Communist Party” contained in Exhibit “B”; see also *Kenmotsu v. Nagle*, supra).

The entire record in this case therefore affords substantial basis for the Department’s finding that appellant is affiliated with the Communist Party. To paraphrase the language of this Court in

Wolch v. Weedin, supra,

his connection with the Party both as Managing Editor of its official organ and as Director and instructor of the Workers School, which proclaims that it authoritatively bases its education on the theory of Marxism-Leninism under the official guidance and leadership of the Communist Party, his addressing Party meetings, his soliciting funds and support for the Party, and his apparent sympathy with Com-

munist Party aims as expressed in the conversation and speeches mentioned above, are, we submit sufficient to show his affiliation with the 'Communist Party.

Appellant cites *U. S. ex rel. Kettunen v. Reimer*, 79 F. (2d) 315, but in that case there was no evidence of affiliation. The record simply showed that the relator sold newspapers as an employee of a bookstore and that among the papers he sold was an organ of the Communist Party. He was employed solely by the bookstore and it did not appear that the store was connected in any way with the Communist Party.

Appellant also argues that in effect the charge of affiliation speaks as of the date of his arrest, viz., November 17, 1934; that the only affiliation shown as of that particular date consists of his connection with the Workers School; and that it has not been shown that the school itself "belongs to the proscribed type of organization."

In the first place, the statute does not refer to the time of the arrest but expressly directs the deportation of any alien who "is found to have been at the time of entry, or to have become thereafter," a member of any one of the classes of aliens enumerated therein (8 *U. S. C. A.*, Section 137(g); *U. S. ex rel.-Yokinen v. Commissioner of Immigration* (C. C. A. 2), 57 F. (2d) 707, certiorari denied 287 U. S. 607). Secondly, the evidence shows not only that appellant did after entry become affiliated with the Communist Party but also that he has been so affiliated *throughout the period of several years immediately preceding and up to the time of his arrest*: through serving as Managing

Editor of the Party's official organ and later as Director and instructor of the school which proclaims that its educational program is carried on under the Party's official guidance and leadership, through his solicitation of funds and support for the Communist Party, and through his apparent sympathy with objectives espoused by the Communist Party as indicated by the testimony of certain of the witnesses. His position with the Workers School is thus only one of several items of evidence going to show that since his entry into the United States he has become affiliated with the Communist Party, and it is his affiliation with that party which is the gist of the entire case (Exhibit "A", pp. 80, 211).

We come then to the question whether there is in the record any evidence from which the Department might deduce that the Communist Party writes, circulates, distributes, prints, publishes or displays printed matter advising, advocating or teaching the overthrow by force and violence of the Government of the United States.

This point requires no extended discussion, because upon the basis of the Communist Party's utterances contained in some of its publications which are in evidence in this case, this Court and other Courts have repeatedly held that the Secretary of Labor was justified in finding that the Communist Party does advocate the overthrow of the United States Government by force and violence. We cite a few of the more recent cases:

Kenmotsu v. Nagle (C. C. A. 9), supra;
Vilarino v. Garrity (C. C. A. 9), 50 F. (2d)
 582;
Wolck v. Weedin (C. C. A. 9), supra;
Kjar v. Doak (C. C. A. 7), 61 F. (2d) 566, 568;
Murdoch v. Clark (C. C. A. 1), 53 F. (2d) 155.

The "Communist Manifesto" which is in evidence in this case (part of Exhibit "B") contains at page 58 a statement which this Court has already held to be sufficient evidence that the Communist Party advocates the forcible overthrow of the Government. That statement is here quoted:

"The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a Communist revolution."

With reference to that and similar statements this Court in *Kenmotsu v. Nagle*, supra, said:

"It would be difficult indeed to interpret these expressions as indicating that the Communists expected to obtain their ends by peaceable means, and the Immigration Department, in making up its conclusions, was not called upon to use ingenuity in devising possible inferences other than those which the language of the pamphlets and placards naturally suggested. At any rate, there was no such case of lack of evidence as will warrant this court in declaring that there was no basis for the deportation order."

Considering the same quotation, this Court said in *Vilarino v. Garrity*, supra:

“It is clear that the Communists do advocate the overthrow of the United States by force or violence.”

Further discussion seems unnecessary. However, we invite attention to the following graphic description of the hoped for revolutionary overthrow of capitalism, and consequent setting up of the dictatorship of the proletariat, contained at pages 75 and 76 of the pamphlet “Why Communism”, which is published and circulated at the local headquarters of the Communist Party (with an introduction written by the aforesaid Darcy):

“Workers stop work, many of them seize arms by attacking arsenals. Many had armed themselves before as the struggles sharpened. Street fights become frequent. Under the leadership of the Communist Party, the workers organize Revolutionary Committees to be in command of the uprising. There are battles in the principal cities. Barricades are built and defended. The workers’ fighting has a decisive influence with the soldiers. Army units begin to join the revolutionary fighters; there is fraternization between the workers and the soldiers, the workers and the marines. The movement among the soldiers and marines spreads. Capitalism is losing its strongest weapon, the army. The police as a rule continue fighting, but they are soon silenced and made to flee by the united revolutionary forces of workers and soldiers. The revolution is victorious. Armed

workers and soldiers and marines seize the principal governmental offices, invade the residences of the President and his Cabinet members, arrest them, declare the old regime abolished, establish their own power, the power of the workers and farmers.”

We would also mention references in the book “Toward Soviet America”, by William Z. Foster, which appellant himself introduced for the purpose of showing the aims of the Communist Party, to the “revolutionary proletariat in arms” (p. 212); to the statement that “the working class can not itself come into power without civil war” (p. 214); to the statement that “the Negro masses will make the very best fighters of the revolution” (p. 225), and to “building youthful bone and muscle in preparation for the gigantic revolutionary work that lies ahead” (p. 234).

We might go on for many pages quoting from the exhibits, positive statements showing that the Communist Party advocates the forcible and violent overthrow of the Government of the United States. Certain of these statements are mentioned in the summary of the Department (Exhibit “A”, pp. 206-204). However, it is entirely unnecessary to argue this point further since it is obvious from the particular excerpts quoted above that there is ample evidence to support the administrative finding in this regard.

Appellant’s contention that the Communist Party does not advocate changing the Government of the

United States until the majority of the people desire such a change, and that the majority would then be justified in compelling the minority to conform to their will, would not, even if true, relieve appellant from the operation of the statute, since no majority would have the right to attempt to bring about such a change except by the method provided in the Constitution (*Kjar v. Doak*, supra). Nor is it material that the Communist Party was or is a recognized political party. The plenary power of Congress to permit aliens to enter or remain in the United States only upon such conditions as it may see fit to prescribe is too well recognized to require discussion (cf. *Fong Yue Ting v. United States*, 149 U. S. 698, 704, 13 S. Ct. 1016, 1019, 37 L. Ed. 905, 910). An alien may be deported for any reason which Congress has determined will make his residence here inimical to the best interests of the Government (*Skeffington v. Katzeff et al.* (C. C. A. 1), 277 F. 129, 131).

CONCLUSION.

We submit that there was nothing arbitrary in the finding of the Department that appellant is affiliated with the Communist Party and that said party writes, circulates, distributes, prints, publishes and displays printed matter advising, advocating and teaching the overthrow by force and violence of the Government of the United States. It is further submitted that

the order of the Court below was correct and should be affirmed.

Dated, San Francisco,
October 16, 1936.

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